

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

Evelia C.,

Case No. 2:23-cv-00661-DJA

Plaintiffs,

Order

v.

Martin O'Malley,¹ Commissioner of Social
 Security,

Defendants.

On April 27, 2023, Plaintiff Evelia C. initiated this action, which involves judicial review of an administrative action by the Commissioner of Social Security, denying her claim for disability benefits under the Social Security Act. (ECF No. 1). On June 22, 2023, the Commissioner filed the certified administrative record. (ECF No. 7). Thus, under Rule 6 of the Supplemental Rules for Social Security Actions under 42 U.S.C. § 405(g), Plaintiff had until July 24, 2023 to file her motion for reversal/remand, but she failed to do so.

The Court entered an order to show cause on August 8, 2024, requiring Plaintiff to show cause why the Court should not dismiss the action for Plaintiff's failure to prosecute the case. (ECF No. 9). In that order, the Court cautioned Plaintiff that "failure to comply with this order may result in the imposition of sanctions." (*Id.*). Plaintiff has failed to comply with the Court's order and has not taken any further action in this case.

District courts have the inherent power to control their dockets and "[i]n the exercise of that power, they may impose sanctions including, where appropriate ... dismissal" of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party's failure to prosecute an action, failure to obey a court order, or


¹ Martin O'Malley is now the Commissioner of Social Security and substituted as a party.

1 failure to comply with local rules. *See Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995)
2 (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th
3 Cir. 1992) (dismissal for failure to comply with an order requiring amendment of complaint);
4 *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to comply with local
5 rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*,
6 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order). In
7 determining whether to dismiss an action for lack of prosecution, failure to obey a court order, or
8 failure to comply with local rules, the Court must consider several factors: (1) the public's interest
9 in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of
10 prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and
11 (5) the availability of less drastic alternatives. *Thompson*, 782 F.2d at 831; *Henderson v. Duncan*,
12 779 F.2d 1421, 1423-24 (9th Cir. 1986); *Malone*, 833 F.2d at 130; *Ferdik*, 963 F.2d at 1260-61;
13 *Ghazali*, 46 F.3d at 53.

14 The Court finds that the first two factors, the public's interest in expeditiously resolving
15 this litigation and the Court's interest in managing the docket, weigh in favor of dismissal. The
16 third factor, risk of prejudice to defendants, also weighs in favor of dismissal, since a presumption
17 of injury arises from the occurrence of unreasonable delay in filing a pleading ordered by the
18 court or prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The
19 fourth factor—public policy favoring disposition of cases on their merits—is greatly outweighed
20 by the factors in favor of dismissal discussed herein. Finally, a Court's warning to a party that
21 her failure to obey the Court's order will result in dismissal satisfies the "consideration of
22 alternatives" requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*,
23 779 F.2d at 1424. In the order directing Plaintiff to file a response to the order to show cause, the
24 Court cautioned Plaintiff that the Court was considering dismissing the action for Plaintiff's
25 failure to prosecute and that failure to comply with the order may result in sanctions. (ECF No.
26 9). So, Plaintiff had adequate warning that dismissal could result from her noncompliance with
27 the Court's order.
28

1 **IT IS THEREFORE ORDERED** that Plaintiff's case is **dismissed without prejudice.**
2 The Clerk of Court is kindly directed to enter judgment accordingly and close this case.

3
4 DATED: August 26, 2024



DANIEL J. ALBREGTS
UNITED STATES MAGISTRATE JUDGE